

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff/Respondent,

v.

MICHAEL DAVID BOOTH,  
Defendant/Petitioner.

NO. CR-99-0018-EFS  
(NO. CV-07-0387-EFS)

**ORDER GRANTING PETITIONER'S  
MOTION TO WITHDRAW § 2241  
PETITION AND DENYING AS MOOT  
GOVERNMENT'S MOTION TO DISMISS  
§ 2241 PETITION**

Before the Court, without oral argument, is Petitioner Michael David Booth's Motion to Withdraw 28 U.S.C. § 2241 Without Prejudice and With Leave to Refile. (Ct. Rec. [425](#).) The Government did not file a response; however, the Government previously filed a Motion to Dismiss Petitioner's § 2241 Habeas Corpus Petition (Ct. Rec. [397](#)). After reviewing the submitted material and relevant authority, the Court is fully informed. For the reasons given below, the Court grants Petitioner leave to withdraw the transferred petition.

The petition sought to be withdrawn has an interesting procedural history. The petition was initially filed in the Western District of Texas as a 28 U.S.C. § 2241 habeas petition. The Western District of Texas understood Petitioner to be attacking the legality of his conviction, construed the petition as a 28 U.S.C. § 2255 petition, and

1 transferred the construed petition to this Court, which is considering  
2 Petitioner's previously-filed § 2255 petition. (CV-08-0190-EFS: Ct. Rec.  
3 1.) Petitioner sought review of the Western District of Texas decision,  
4 but the Fifth Circuit denied review, finding that the transfer decision  
5 was an interlocutory unreviewable order. (Ct. Rec. [413](#).) Petitioner's  
6 instant motion seeks permission to withdraw the construed petition  
7 because Petitioner, who is now represented by counsel, believes that he  
8 prematurely sought § 2241 relief. The Court finds good cause to allow  
9 Petitioner to withdraw the construed petition and therefore grants  
10 Petitioner's motion and denies as moot the Government's dismissal motion.  
11 Accordingly, the only issues before the Court will be those raised in  
12 Petitioner's § 2255 petition.

13 For the reasons given above, **IT IS HEREBY ORDERED:**

14 1. Petitioner's Motion to Withdraw 28 U.S.C. § 2241 Without  
15 Prejudice and With Leave to Refile (Ct. Rec. [425](#)) is **GRANTED**.

16 2. Petitioner's construed petition (Ct. Rec. [395](#)) is **DISMISSED**  
17 **without prejudice**.

18 3. The Government's Motion to Dismiss Petitioner's § 2241 Habeas  
19 Corpus Petition (Ct. Rec. [397](#)) is **DENIED AS MOOT**.

20 **IT IS SO ORDERED.** The District Court Executive is directed to enter  
21 this Order and provide a copy of this Order to counsel.

22 **DATED** this 19<sup>th</sup> day of March 2009.

23  
24 S/ Edward F. Shea  
25 EDWARD F. SHEA  
United States District Judge

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